November 29, 2019

The Hon. Shane Simpson
Minister of Social Development and Poverty Reduction
engageaccessibility@gov.bc.ca

Re: Feedback on the British Columbia Framework for Accessibility Legislation

Dear Minister Simpson,

The Information Technology Industry Council (ITI) and Information Technology Association of Canada (ITAC) appreciate the opportunity to provide feedback on the British Columbia Framework for Accessibility Legislation. ITI and ITAC members represent the entire spectrum of technology: from internet companies, to hardware and networking equipment manufacturers, to software developers. Both organizations are fully committed to supporting and increasing innovation ecosystems that improve people's lives, including improving and providing accessibility and inclusion for people with disabilities.

In recent years, there has been increased interest in accessible technology due to the United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD"). ITI and ITAC members are pleased to support the Convention and serve as advisors to many governments as they develop policies and processes to ensure people with disabilities benefit from the use of accessible technology.

Please find below ITI and ITAC members' responses to specific questions in the survey regarding the British Columbia Framework for Accessibility Legislation. We hope that you find our comments useful in the development of this important piece of legislation and welcome any questions you might have.

Sincerely,

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About ITI. ITI is the global voice of the tech sector. We advocate for public policies that advance innovation, open markets, and enable the transformational economic, societal, and commercial opportunities that our companies are creating. Our members represent the entire spectrum of technology: from internet companies, to hardware and networking equipment manufacturers, to software developers. ITI's diverse membership and expert staff provide a broad perspective and intelligent insight in confronting the implications and opportunities of policy activities around the world. Visit http://www.itic.org/ to learn more. Follow us on Twitter for the latest ITI news @ITI_TechTweets.

About ITAC. As Canada's national ICT business association, ITAC champions the development of a robust and sustainable digital economy in Canada and has served as the authoritative national voice of the $170 billion ICT industry for over 60 years. Our role as a trusted and authoritative voice has expanded significantly over the years, as technology has come to play a more significant and important role in all sectors of our economy. @ITAC_Online and www.itac.ca

- **What is most important to you about accessibility legislation for British Columbia?**

  Harmonize with legislation from the federal government and other provinces to promote inclusion and accessibility. The consistency of accessibility requirements across jurisdictions promotes innovation and interoperability, reduces costs to consumers, and helps local economies by allowing technology companies to build once and sell worldwide. ITI and ITAC members are pleased to see the framework note the importance of complementing federal efforts. We also urge the Government of British Columbia to align with legislation from other provinces. Without such harmonization, businesses will be faced with the prospect of trying to comply with multiple, potentially conflicting, requirements for Canada and individual provinces. This will translate into additional costs and administrative burdens for businesses and increased costs for consumers.

- **What do you think about the suggested model for legislation and scope of legislation?**

  ITI and ITAC members agree with the framework's suggestion that accessibility standards and regulations should be developed in conjunction with persons with disabilities, experts, and other stakeholders. Industry and other covered entities are stakeholders that should be included in the process as they can contribute knowledge of existing and developing regulations and standards. These stakeholders can also advise on the feasibility and readiness of technology to meet requirements within a compliance timeframe.

  Furthermore, existing globally recognized accessibility standards should be used wherever possible, rather than developing new ones. Where existing standards fail to address an identified user need, the Government of British Columbia should engage with on-going efforts in standards development organizations to address that need instead of creating standards unique to British Columbia. Unique, region-specific requirements on top of international standards reduce the economy of scale for companies trying to meet accessibility requirements globally. The needs of people with disabilities are the same worldwide. Products and services that address those needs through the implementation of globally harmonized standards can be delivered more quickly and at a lower cost to consumers.

- **Do you have other ideas for the model for legislation and scope of legislation you would like considered?**

  Focus on public sector procurement. Requiring accessibility in public sector procurement creates a market for accessible technology, spurs innovation and increases the availability of accessible products and services generally, without the need to regulate the private sector directly. By deploying accessible technology, the Government of British Columbia can more easily interact with and deliver services to the public, increase employment of people with disabilities within its agencies and create an inclusive work environment where everyone can contribute and collaborate.

  Adopt an outcome-based approach. The Government of British Columbia should follow an outcome-based approach. This would enable organizations to develop and implement the most appropriate, state-of-the-art accessibility solutions in their products and services and will help future-proof the legislation. Industry standards play an important role in the successful implementation of an outcome-based approach by providing the technical details for how to achieve those outcomes. They are also updated more easily and more frequently than legislation to reflect the current state of technology as it evolves.

Prescriptive approaches, including technology mandates, can chill innovation in accessibility solutions and force organizations to comply with requirements that are out-of-date or no longer best practice.

- **What do you think about the suggested purposes and principles for legislation?**

ITI and ITAC members support the purposes and principles of the framework. In particular,

- It is critical that the Government of British Columbia achieve the purpose of promoting compatibility with the Accessible Canada Act and between federal and provincial accessibility standards. *See our comments above on the importance of harmonization.*

- Adaptability is important and accessibility legislation should reflect that disability and accessibility are evolving concepts that change as services, technology, and attitudes change. Adaptability should also be reflected in the standards so that as technology changes, people with disabilities don't get left behind.

- We applaud the focus on collaboration and recognize the importance of government, community and business working together towards timely development of standards.

- **What do you think about the suggested approach to accessibility standards?**

ITI and ITAC members agree that the approach should be consistent with that taken in other Canadian jurisdictions, for reasons explained previously. We also support including desired accessibility outcomes, as explained above.

Furthermore, existing globally recognized accessibility standards should be used wherever possible, rather than developing new ones. Where existing standards fail to address an identified user need, the Government of British Columbia should engage with on-going efforts in standards development organizations to address that need instead of creating standards unique to British Columbia. The needs of people with disabilities are the same worldwide. Products and services that address those needs through the implementation of globally harmonized standards can be delivered more quickly and at a lower cost to consumers.

As the framework suggests, legislation should allow for the adoption of voluntary accessibility standards. These voluntary standards could be adopted in regulation as "safe harbors", providing covered entities with a presumption of conformity. As explained previously, mandating technical approaches in regulation can chill innovation in accessibility solutions and force organizations to comply with requirements that are out-of-date or no longer best practice. Voluntary "safe harbor" standards are updated more easily and more frequently than regulation to reflect the current state of technology as it evolves.

- **What do you think about the suggested approach to timelines for accessibility legislation?**

ITI and ITAC members recommend that the implementation timeline for accessibility standards be two years after any new or updated standard is adopted to provide ICT companies enough time to update their development and testing processes to enable compliance.

- **Do you have other ideas about the development of accessibility standards or timelines for accessibility standards?**

The Government of British Columbia should seek to expedite the development of accessibility standards by adopting or building on existing standards, policies and practices developed elsewhere in Canada or

around the world. In recent public consultations, ITI and ITAC members urged the Governments of Canada [Public Services and Procurement Canada (PSPC)] and Ontario to adopt the ETSI EN 301 549 standard for Information and Communications Technology (ICT). We now recommend the Government of British Columbia do the same.

ETSI EN 301 549 is a comprehensive technical standard developed by experts, including people with disabilities, specifically for procurement of accessible ICT and is the most up to date and comprehensive ICT accessibility standard. Since its initial publication in 2014, ETSI has updated the standard several times to make improvements and to reflect the evolution of technology. A wide array of stakeholders, including people with disabilities, participated in the original development of the standard and continue to participate in the update process. The most recent update (August 2018) incorporated new criteria from the W3C Web Content Accessibility Guidelines (WCAG) 2.1 standard, published in June 2018. A further update to EN 301 549 was recently approved and is expected to be published before the end of 2019. As part of the normal standards process, ETSI will continue to periodically review and update the standard as needed, for example, to implement the recently adopted European Accessibility Act.

Many countries across the globe have adopted ETSI EN 301 549: all 28 European Union (EU) Member States, several non-EU countries on the European continent (for example, Norway, Serbia, Albania, Macedonia and Switzerland), as well as countries outside of Europe (for example, Australia and Mexico). The Government of British Columbia should join this growing international consensus and work with other provincial governments, the federal government, and the Canadian Accessibility Standards Development Organization (CASDO) to uniformly adopt EN 301 549 across Canada. Adoption of EN 301 549 will help meet the goal of expediting the development of accessibility standards while providing needed harmonization of standards both inside and outside of Canada.

However, in adopting any standard for information and communication technology (ICT), the legislation should acknowledge that 100% conformance to that standard may not be possible and provide a reasonable amount of flexibility, allowing for minor issues that do not create a major obstacle to using the ICT. Requiring ICT to be 100% conformant always poses a significant challenge, especially for complex websites, products and services whose software is updated often. *See our comments related to compliance below.*

ITI and ITAC members recommend that the implementation timeline for accessibility standards be two years after a standard is adopted or updated to provide ICT companies enough time to update their development and testing processes to enable compliance.

- **What do you think about the suggested approach to governance for accessibility legislation?**

ITI and ITAC members support broad inclusion of experts and other stakeholders such as industry, on the board and in technical committees of the Standards Development Board. We also recommend that the Standards Development Board work with other provincial governments, the federal government, and the Canadian Accessibility Standards Development Organization (CASDO) to provide the needed harmonization of standards across Canada.

Furthermore, existing globally recognized accessibility standards should be used wherever possible, rather than developing new ones. Where existing standards fail to address an identified user need, the Government of British Columbia should engage with on-going efforts in standards development organizations to address that need instead of creating standards unique to British Columbia. The needs of

people with disabilities are the same worldwide. Products and services that address those needs through the implementation of globally harmonized standards can be delivered more quickly and at a lower cost to consumers.

- **What do you think about the suggested approach to incentives, compliance, and enforcement for accessibility legislation?**

  Develop a unified reporting regime. The framework suggests that one compliance measure could be "accessibility plans and progress reports prepared in consultation with people with disabilities". Accessibility legislation in other provinces (*e.g.,* Ontario) and the Accessible Canada Act currently require covered entities to prepare plans and progress reports. If the Government of British Columbia were to adopt this compliance measure, covered entities will be faced with the prospect of having to produce multiple, potentially duplicative, reports for the Government of Canada as well as individual provinces. This will translate into additional costs and administrative burdens for covered entities and diversion of resources that could be used to implement those plans and improve accessibility for consumers. Requiring multiple, unique accessibility plans and progress reports will be especially burdensome for small and medium enterprises as their resources are inherently limited.

  To reduce these burdens, ITI and ITAC members strongly encourage the Government of British Columbia to work with the Government of Canada and other provinces to develop a unified reporting regime that will allow covered entities to produce and publish a single accessibility plan and progress report that satisfies all requirements across Canada. We also agree that "reduced reporting requirements for individuals and organizations that show accessibility leadership" is a good incentive that will further reduce the administrative burden on covered entities.

  Encourage informal resolution of complaints. The Government of British Columbia should encourage consumers and public sector entities to contact companies directly to solve problems bilaterally before submitting complaints to regulators. In many cases, this will allow consumers to settle their disputes at an early stage without the involvement of mediators or administrative bodies. Resolving disputes directly with a company is easier, faster, and less expensive than going to court, administrative bodies, or mediators, benefitting all stakeholders.

- **Do you have other ideas about how to achieve the right mix of incentives and compliance/enforcement tools for accessibility legislation?**

  Self-declaration of conformance should be an acceptable validation method. We recommend that the legislation recognize self-declaration of conformance as an acceptable method of validating conformance to accessibility standards. ITI and ITAC members have a long history of designing products and services to meet globally recognized accessibility standards and technical requirements and are committed to sharing information on how their offerings meet those standards. Member companies provide self-declarations of conformance [such as in the Voluntary Product Accessibility Template® (VPAT) format] that customers can use to understand how products and services conform to common accessibility standards such as ETSI EN 301 549.

  ITI and ITAC members consider accessibility throughout the product development cycle, engaging people with disabilities in product planning, design, prototyping, and testing. Our members use various methods of testing to evaluate the accessibility of their products and services, including manual and automated testing, visual inspection, tool-assisted testing, and testing by people with disabilities using assistive

technologies. The results from this testing and outside consultation are used to complete self-declarations of conformance.

Compliance should be defined appropriately. In defining compliance for information and communication technology (ICT), the legislation should acknowledge that 100% compliance may not be possible and provide a reasonable amount of flexibility, allowing for minor issues that do not create a major obstacle to using the ICT. Requiring ICT to be 100% compliant always poses a significant challenge, especially for complex websites, products and services whose software is updated often.

Software is subject to having bugs. If a product or service is always required to be fully compliant, testing will be cost prohibitive as no bug, no matter how small, can be tolerated. In addition, some portion of a complex website is always changing, including content updates, new content, and user interface changes that happen almost continually, perhaps at the rate of hundreds or even thousands of page updates per second. Thus, the likelihood that every page of a complex website (out of what might be hundreds of thousands or even millions of pages) can be compliant 100% of the time is so low as to be an impossible expectation.